

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DEBRA J. SNEED)	
Claimant)	
VS.)	
)	Docket No. 265,468
BURLINGTON COAT FACTORY)	
Respondent)	
)	
AND)	
)	
LUMBERMANS UNDERWRITING ALLIANCE)	
Insurance Carrier)	

ORDER

Claimant requests review of a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on May 28, 2002.

ISSUES

The Administrative Law Judge (ALJ) denied claimant's request for a change of authorized treating physician and medical treatment, finding that "additional medical treatment is not recommended at this time and, further, that causation was not established regarding the left upper extremity."

Claimant requests review of the denial of compensability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board (Board) makes the following findings of fact and conclusions of law:

The Board's jurisdiction to review preliminary hearing findings is statutorily created by K.S.A. 44-534a. The statute provides that the Board may review those preliminary findings pertaining to the following: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice was given or claim timely made; and (4) whether certain defenses apply. The Board also has jurisdiction to review preliminary hearing findings if it is alleged the administrative law judge exceeded the judge's jurisdiction. See K.S.A. 44-551.

In the instant case, the ALJ denied claimant's request for medical treatment. The Order specifically states that the reasons behind this denial are both that claimant failed to prove her alleged left upper extremity injury was caused by the employment and, in addition, that claimant failed to prove a need for additional medical treatment. The latter finding is not one of the jurisdictional issues listed in K.S.A. 44-534a and, therefore, is not reviewable at this stage of the proceedings. Conversely, the issue of whether claimant suffered an accidental injury that arose out of and in the course of her employment is jurisdictional. But because Judge Barnes also denied claimant's request for medical treatment on a basis which is not subject to the Board's review at this time, the jurisdictional issue is moot.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that claimant's appeal from the Order of Administrative Law Judge Nelsonna Potts Barnes dated May 28, 2002, should be and is hereby dismissed.

IT IS SO ORDERED.

Dated this ____ day of October 2002.

BOARD MEMBER

c: Kevin T. Stamper, Attorney for Claimant
Michael J. Haight, Attorney for Respondent and Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Director, Kansas Division of Workers Compensation

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